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IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-709

LOCAL 520, INTERNATIONAL UNION
OF OPERATING ENGINEERS, *et al.*,
Petitioners,

vs.

JAMES JONES, *et al.*,
Respondents.

PETITION FOR A WRIT OF CERTIORARI
To the United States Court of Appeals for the Seventh Circuit

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Title 42, U.S.C. § 1981 2,3,11,12,13,14

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To the United States Court of Appeals
for the Seventh Circuit

Local 520, International Union of Operating Engineers, Calhoun County Contracting Corporation, Rust Construction Company, G. Helmkamp Excavating and Trucking Co., H. H. Hall Construction Company and Reese Construction Company, your petitioners, pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Seventh Circuit entered in this cause on August 13, 1979.

OPINIONS BELOW

The opinion of the court below (App. A, infra, A-1-3)[1] is reported at _____F. 2d_____, 20 FEP Cases 907. The orders and judgments of the district court (App. C, infra, A-6-48) are not reported.

JURISDICTION

The judgment of the court below (App. B, infra, A-4-5) was entered on August 13, 1979. The hour of entry of the judgment was not noted thereon. The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

QUESTION PRESENTED

Respondents, claiming third party beneficiary status, invoked the jurisdiction of the district court for their cause against petitioners under 28 U.S.C. § 1343(4) and Executive Order 11246, 3 C.F.R. 418, and sought remedy by their complaint for alleged violation by petitioners of 42 U.S.C. § 1981 in that petitioners failed to comply with a voluntary agreement providing for a preferential employment quota of minority persons. The district court dismissed two counts of respondents' complaint and entered judgment for petitioners on the third count, on the ground that respondents' suit to enforce the minority preferential employment agreement was not maintainable under 42 U.S.C. § 1981 or Executive Order 11246 and that the district court lacked jurisdiction under 28 U.S.C. § 1343(4). On appeal by respondents, the court below reversed the district court's dismissal of Counts I and II of the complaint, holding that the district court had jurisdiction under 28 U.S.C. § 1343(4), since

[1] References to the appendix to this Petition are designated "App." The symbol "RA" refers to the appendix to respondents' brief in the court below. The symbol "RD" refers to depositions on file and part of the record in this cause.

the alleged denial to respondents of their third party beneficiary rights under the agreement to a minority employment quota is sufficient to maintain an action under 42 U.S.C. § 1981. The court below affirmed the district court's entry of judgments for the petitioners on Count III of respondents' complaint based on the findings of the district court that respondents had been accorded hire and employment equally with whites. The following question is presented:

Whether an action, instituted by persons claiming third party beneficiary status, alleging failure of compliance by the parties to a voluntary agreement with its provisions for preferential employment of minority persons, is maintainable under 42 U.S.C. § 1981 and subject to the jurisdiction of the federal district courts under 28 U.S.C. § 1343(4).

PERTINENT STATUTES

28 USC §1343(4)

The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

> (4) To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote.

42 USC §1981

All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

STATEMENT

A. The Material Facts

Petitioner Local 520, International Union of Operating Engineers is an unincorporated association functioning as a labor organization, and petitioner companies are corporations engaged in road building.

An Agreement To Facilitate And Maintain Equal Employment Opportunity For Highway Construction In Madison and St. Clair Counties [Illinois], hereinafter referred to as the "Agreement", was signed on June 4, 1973 by petitioner Local 520 and other labor organizations and by associations in which the petitioner companies hold membership (RA 38-40). The Agreement provides (RA 38):

> In order to bring about the implementation of equal employment opportunities, the following will be strictly adhered to:
>
> 1. Title VII, Civil Rights Act of 1964
> 2. Presidential Executive Order 11246
> 3. U.S. Highway Administration Order, Interim 7-2(1)
> 4. The recruitment, referral and employment of a minimum twenty per cent minority group individuals on a craftwide basis in highway construction in the aggregate, throughout the jurisdiction of this agreement.

The Agreement was promulgated by the State of Illinois and provides for an Administrative Committee, comprised of an equal number of designees of the signatory unions and associations, a chairman and three observer members designated by the Governor of Illinois and a secretary appointed by the Secretary of the Illinois Department of Transportation. The function of the Administrative Committee is "to review the provisions of

this Agreement to insure that twenty percent of the construction employees by craft, on a two-countywide basis, are minorities." (RA 38)

The Agreement further specifies that its terms, including the requirement for employment of a minimum of twenty percent minorities, "shall be incorporated directly or by reference into all Federal Aid Highway construction contracts so that non-member firms of S.I.B.A. and S.I.C.A. [the signatory associations] and subcontractors employing the crafts described herein shall also be bound by the terms and conditions of this Agreement." (RA 38)

The initial term of the Agreement was a two-year period commencing on June 4, 1973, thereafter extended to June 4, 1977 (RA 40), and again extended to June 4, 1979.

Black members and referral registrants of petitioner Operating Engineers total approximately 200 in number. (RD, Van Clark, August 2, 1977, pp. 23-24). Respondents are a small percentage of that total who have designated themselves as "Concerned Black Operators"(RD , T. C. Glenn, Jr., p. 37) and who seek to expand the twenty percent minority employment requirement of the Agreement to all highway, building and heavy construction in the sixteen counties within the territorial jurisdiction of Operating Engineers. (RD , Van Clark, August 2, 1977, pp. 66-69).

Respondents filed complaint in the U.S. District Court for the Eastern District of Illinois on July 14, 1976 and an amended complaint in three counts on November 23, 1976.[2] (RA 27-40)

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[2] Respondents' amended complaint denominated as additional defendants the United States of America, the Secretary of the U.S. Department of Transportation, the Governor of Illinois and the Illinois Department of Transportation, invoking the jurisdiction of the district court under 28 U.S.C. § 1346. (RA 27-29)

By Count I of their amended complaint, respondents alleged that petitioners had failed to comply with the minority hiring provisions of the Agreement by permitting white persons to classify themselves as Indians and by referring and employing such white persons as minorities, thereby diminishing the extent of preferential employment of petitioners as third party beneficiaries of the Agreement. (RA 30-33)

By Count II of their amended complaint, respondents restated the allegations contained in Count I and alleged further that Operating Engineers had violated the referral provisions of a consent decree and had not made referrals as required by the Agreement. Respondents claimed third party beneficiary status under the consent decree and sought relief of the district court to enjoin Operating Engineers from making referral and from applying seniority as mandated by the decree.[3]

[3] Operating Engineers entered into a consent decree on May 13, 1969 in disposition of a complaint filed by United States under Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000 *et seq.*, filed in the U.S. District Court for the Eastern District of Illinois and docketed as Civil Action No. 69-9. The consent decree sets forth that the district court made no findings as to the allegations of the complaint and that the defendants did not admit the truth of the allegations. The decree provides for employment referral by Operating Engineers by seniority and the consent decree, as amended on December 2, 1974 upon stipulation of Operating Engineers and the Equal Employment Opportunity Commission (E.E.O.C.), requires Operating Engineers to "provide employment opportunities to 20% in the aggregate of referrals to highway construction in Madison and St. Clair counties to minority applicants." Paragraph 16 of the consent decree requires the Equal Employment Opportunity Commission to serve ten days' written notice to Operating Engineers of any failure of compliance with the decree and if the non-compliance is not remedied within that period, E.E.O.C. may make application to the district court for an order to show cause why the provisions of the decree should not be specifically enforced. The consent decree and the amendment thereto are set out in the appendix to the brief of respondents in the court below.

In Count III of their complaint, respondents realleged and restated the paragraphs of Counts I and II and further alleged that petitioners Operating Engineers and companies had failed and refused to refer and employ respondents on construction work other than highway construction in Madison and St. Clair Counties because of respondents' race, which refusal had been permitted by the United States and the State of Illinios. (RA 35-37)

The district court, by order dated April 21, 1977 (App. C, infra, A-6), dismissed Count I of respondents' complaint for lack of jurisdiction under 28 U.S.C. § 1343 and dismissed Count II of their complaint on the ground that respondents impermissibly sought thereby to attack collaterally the decree entered by the court in another case in which the respondents were not parties primarily in interest. The district court dismissed the complaint as to the associations, S.I.B.A. and S.I.C.A., in its entirety.

Trial was set for May 15, 1978 by the district court on Count III of respondents' complaint. Upon trial, the companies named as defendants submitted in evidence testimony adduced upon depositions in support of their several motions for summary judgment that respondents had not been discriminated against in hire or employment by reason of race. (RA 283-285, 288-289, 301-303, 309-314, 317-320, 370-383). Upon the statement of counsel for respondents that the evidence submitted in support of the motions was not in dispute (RA 332-333, 376, 378, 379, 380, 382), the district court entered orders making factual findings that respondents had not been discriminated against because of race and entered judgments thereon in favor of all the companies denominated as defendants in the complaint. (App. C, infra, A-16-43).

Upon stipulation of respondents' counsel that respondents' sole basis for relief under Count III of their complaint rested on the allegation that the employment preference provided by the

Agreement for minority persons had been diminished because the defendants named in Count III should have known that certain white employees had designated themselves as Indians on survey cards submitted to the Illinois Department of Highways (RA 364-365), the district court granted summary judgment on Count III in favor of all named defendant companies and Operating Engineers. (App. C, infra, A-16-43). The district court, by separate order (App. C, infra, A-44), sustained the motion of the Governor of Illinois and the Illinois Department of Transportation for summary judgment and entered judgment in their favor (App. C, infra, A-47).

B. The Judgments of the District Court

The district court, by order dated April 27, 1977, dismissed Counts I and II of respondents' complaint. The district court dismissed Count I for lack of jurisdiction under 28 U.S.C. § 1343 since respondents' claim to preferential employment, by reason of race, was not maintainable under 42 U.S.C. § 1981. The district court dismissed Count II on the ground that respondents thereby impermissibly mounted a collateral attack on a decree of the district court prior to seeking remedy in the previous case. (App. C, infra, A.6).

Upon findings of uncontroverted fact that the companies named as defendants had not discriminated in employment against respondents by reason of race, the district court, on May 15-16, 1977, entered summary judgments in favor of all company defendants. (App. C, infra, Calhoun County Contracting Co. A-16; H. H. Hall Construction Co. A-19; G. Helmkamp Excavating and Trucking Co. A-22; Hoeffken Bros., Inc. A-25; Keeley Bros. Contracting Co. A-28; Charles E. Mahoney Company A-31; Reese Construction Company A-33; Rust Construction Company A-37; Thompson Asphalt Co. A-39).

Upon stipulation by respondents' counsel that Count III of respondents' complaint rested solely on the failure of the State

of Illinois to enforce the preferential minority hiring system contained in the Agreement, allegedly due to the failure of the companies and union named as defendants to perform a "duty" under 42 U.S.C. § 1981 to stop white employees from designating themselves as American Indians, the district court, on May 16, 1978, entered summary judgments for the defendant companies (App. C, infra, A-42-43) and for Operating Engineers (App. C, infra, A-43-44) holding that 42 U.S.C. § 1981 does not require preferential hiring.

By order dated May 15, 1978, the district court entered judgment for the Governor of Illinois and the Illinois Department of Transportation. (App. C, infra, A-44-48) The district court noted that respondents claimed third party beneficiary status under the preferential hiring Agreement and that respondents contended that the State, by allegedly allowing persons to be classified as Indians, was depriving respondents of employment preference. The district court held that, while 42 U.S.C. § 1981 guarantees all persons the right to contract equal with the right of whites, the contractual rights sought to be enforced by respondents are preferential rights, not equal rights. The district court held that 42 U.S.C. § 1981 does not provide for affirmative action and that it was, therefore, without jurisdiction over respondents' claims against the Governor of Illinois and the Illinois Department of Transportation.

HOLDINGS BELOW

The court below affirmed the summary judgments entered by the district court on Count III of respondents' complaint and the findings of the district court that the named defendants had not discriminated in hire or employment against any respondent. The court below reversed the district court's ruling in dismissing Counts I and II of the complaint that a suit to enforce a preferential hiring agreement is not maintainable under 42 U.S.C. § 1981. The court below held that the preferential hir-

ing agreement created third party beneficiary rights in the white and black operating engineers and that the allegation of respondents that the denial of their preferential employment ratio was racially motivated is sufficient to maintain an action under 42 U.S.C. § 1981 for deprivation of their beneficiary rights to preferential employment.(App. A, infra, A-1-2)

REASONS FOR GRANTING THE WRIT

The holding in this case of the Court of Appeals for the Seventh Circuit that an action to enforce preferential treatment of minority persons in employment is maintainable under 42 U.S.C. §1981 is in direct conflict with the decision of the Sixth Circuit in *Long* v. *Ford Motor Company,* 496 F. 2d 500 (1974) and with the decision of the Fifth Circuit in *Watkins, et al.* v. *United Steelworkers of America, et al.,* 516 F. 2d 41 (1975).

The decisions in conflict impact upon the jurisdiction of the district courts under 28 U.S.C. §1343(4) over increasing litigation arising from claims under 42 U.S.C. §1981, the exact applicability of which has not been decided by this Court. *New York City Transit Authority, et al.* v. *Beazer, et al.,* __ U.S. __ (1979) , 59 L. Ed. 2d 587 at 601 n. 24.

In *Long* v. *Ford Motor Company, supra,* plaintiff, a black employee, was dismissed from employment by defendant Ford. Plaintiff instituted suit under 42 U.S.C. §1981, contending that Ford had not adequately trained him for his tasks. The district court found for plaintiff. On appeal by Ford, the Sixth Circuit held that 42 U.S.C. §1981 applies to employment contracts and that "When a person sues under this statute to enforce his right not to be discriminated against in private employment, he must show that he was unable to make or enforce a contract that White citizens were able to make or enforce."

The Sixth Circuit noted the statement of this Court in *Griggs* v. *Duke Power Co.,* 401 U.S. 424, 430-431:

> Congress did not intend by Title VII, however, to guarantee a job to every person regardless of qualifications. In short, the Act does not command that any person be hired simply because he was formerly the subject of discrimination, or because he is a member of a minority group. Discriminatory preference for any group, minority or majority, is precisely and only what Congress has proscribed.

> What is required by Congress is the removal of artificial, arbitrary, and unnecessary barriers to employment when the barriers operate invidiously to discriminate on the basis of racial or other impermissible classifications.

and stated that it viewed the discussion applicable to 42 U.S.C. §1981.

The Sixth Circuit concluded:

> Section 1981 is, by its very terms, however, not an affirmative action program. It is an equalizing provision seeking to ensure that rights do not vary according to race. It does not require that persons be accorded preferential treatment because of their race. Id. at 505.

In *Watkins, et al.* v. *United Steelworkers of America, et al., supra,* plaintiffs complained that defendants Steelworkers and Continental Can Company had discriminated against them in violation of Title VII and 42 U.S.C. §1981 by the application of a negotiated system of plant seniority. The Fifth Circuit, reversing the district court's decision that the seniority system violated Title VII and 42 U.S.C. §1981, stated that "Blacks are guaranteed the same rights as whites under §1981, not greater rights" and held that plaintiffs, when hired, obtained the same contract rights as white citizens when hired and that their cause of action was not maintainable under 42 U.S.C. §1981.

In *Blount* v. *Xerox,* 405 F. Supp 849, (D. Ct. N. Cal. 1975), plaintiff was enrolled in the employer's affirmative action program called "Fast Track" with the expectation that he would be considered for the position of branch manager. Plaintiff instituted suit alleging violation of 42 U.S.C. §1981 and claiming that he was entitled to special and preferential treatment not extended to white employees of Xerox, including continuation of his participation in the affirmative action program which his white supervisor deemed inefficacious. The district court granted judgment to the defendant employer, holding:

> All that Section 1981 requires here is that no person be treated dissimilarly in employment opportunity on account of race. It was intended to secure equal treatment, not preferential treatment, in employment opportunity and other areas to all persons. Id. at 853.

The district court rejected the contention of plaintiff that Xerox had violated 42 U.S.C. §1981 by not maintaining its affirmative action program in effect, holding:

> To find, as plaintiff would have this court do, that having voluntarily adopted an affirmative action program, an employer is compelled to maintain it, or else contravene federal law is stretching the meaning of 42 U.S.C. §1981 beyond its proper intendment. This section cannot be construed to place an affirmative obligation on employers to adopt or to maintain affirmative action programs. Id. at 853.

The Agreement under consideration in the instant cause, sought to be enforced by respondents, provides that the parties thereto will "strictly adhere" to its provisions for the "employment of a minimum of twenty percent minority individuals." (RA 38). The Agreement imposes a preferential minority employment quota.

The court below did not disturb the findings of the district court that petitioners had not discriminated against respondents in employment, but, nevertheless, held that respondents' suit to enforce the preferential employment quota is maintainable under 42 U.S.C. §1981. The decisions of the Fifth and Sixth Circuits in *Long* v. *Ford Motor Company* and *Watkins, et al.* v. *United Steelworkers of America, et al.,* holding that suits to enforce preferential rights for any person, minority or majority, are not maintainable under 42 U.S.C. §1981, were briefed by petitioners to the court below, but were not adverted to in its decision.

The court below found respondents' allegations of a racially motivated deprivation of beneficiary rights sufficient to maintain an action under 42 U.S.C. §1981. The minority employment quota in the Agreement is clearly racially motivated. Whether the preferential quota was allegedly diminished in consequence of racial or non-racial causes does not alter the fact that respondents' suit seeks to restore and preserve a preferential racial quota and that respondents invoked 42 U.S.C. §1981 to that end. If 42 U.S.C. §1981 may be invoked only for violation of equal rights, then respondents' complaint is not within district court jurisdiction under 28 U.S.C. §1343(4). *Long* v. *Ford Motor Company,* 496 F. 2d 500 (6th Cir. 1974); *Watkins, et al.* v. *United Steelworkers of America, et al.,* 516 F. 2d 41 (5th Cir. 1975); *Blount* v. *Xerox,* 405 F. Supp. 849 (D. Ct. N. Cal. 1975).

The employment quota imposed by the Agreement is not a "referral plan," the term used in the decision of the court below (App. A, *infra, A-2*), since companies parties to the plan are not free to selectively accept or reject referral applicants for employment on a non-discriminatory basis, but rather are required to maintain a racial employment ratio.[4]

Moreover, contrary to the assertions of the court below, the Agreement is neither designed to eliminate any "lingering vestiges of discrimination" nor limited to a "20 percent requirement." The Agreement provides for "a minimum twenty percent minority group employment" and it is neither a temporary

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[4]In this regard, the Agreement differs markedly from the Supplemental Decree in Civil Action No. 69-9 entered by the U.S. District Court for the Eastern District of Illinois on December 2, 1974, which requires Operating Engineers "to provide employment opportunities to 20% in the aggregate of referrals" to minority applicants but which imposes no requirement either that the referral applicants be employed or that the minority applicants hired be in a fixed or minimum ratio to other employees.

measure nor intended "simply to eliminate a manifest racial imbalance." *United Steelworkers of America, AFL-CIO, et al.* v. *Brian F. Weber, et al.,* __ U.S. __ (1979), 61 L. Ed. 2d 480 at 492. On the contrary, the Agreement imposes a minority minimum employment quota without upper limits and is intended to perpetuate a racial balance of not less than twenty percent minority employment in its operative geographic area.

The quota provisions of the Agreement are antithetical to the intent of Title VII as expressed by this Court in *Griggs* v. *Duke Power, supra,* at 431, that "Discriminatory preference for any group, minority or majority, is precisely and only what Congress has proscribed." To the contrary, a discriminatory preference for a minority group is precisely and only what the Agreement prescribes.

The court below chose to use the term "beneficiary rights" in lieu of "preferential rights" and chose to utilize the word "referral" in lieu of the word "quota", and wrote (App. A , *infra, A-2*):

> In our view, the agreements create third party beneficiary rights in the white and black operating engineers who stand to benefit from the operation of the referral plan.

The import of the cited language of the court below is that a black quota begets a white quota and that incumbents in each of the quota pools may maintain actions under 42 U.S.C. §1981 to preserve, protect and defend its racial employment ratio.

When this Court decided in *McDonald, et al.* v. *Santa Fe Transportation Company, et al.,* 427 U.S. 273 (1976), that 42 U.S.C. §1981 is applicable to racial discrimination against white persons, it recited the legislative history of 42 U.S.C. §1981 in support of its finding that the statute intended to proscribe the making or enforcement of contracts against or in favor of any race. Upon this principle, the decision of the court below must fall.

The decision reached by the court below that an action may be maintained under 42 U.S.C. §1981 to enforce a racially-based preferential employment agreement is inconsistent with the legislative history and the express language of that statute and the decisions of this Court thereunder in *McDonald, et al.* v. *Santa Fe Transportation Company, et al.*, 427 U.S. 273 (1976) and *New York City Transit Authority, et al.* v. *Beazer, et al.*, __ U.S. __ (1979) 59 L. Ed. 2d 587, enunciating that 42 U.S.C. §1981 grants equal and not preferential rights to all persons. The decision of the court below is in conflict with the decision of the Sixth Circuit in *Long* v. *Ford Motor Company*, 496 F. 2d 500 (1974) and with the decision of the Fifth Circuit in *Watkins, et al.* v. *United Steelworkers of America, et al.*, 516 F. 2d 41 (1975).

CONCLUSION

Upon all of the reasons set forth herein, petitioners respectfully submit that this petition for a writ of *certiorari* should be granted.

Respectfully submitted,

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APPENDIX

APPENDIX A

In the
UNITED STATES COURT OF APPEALS
For the Seventh Circuit

No. 78-1815
James Jones, et al.,

Plaintiffs-Appellants,

v.

Local 520, International Union of Operating Engineers, et al.,
Defendants-Appellees

Appeal from the United States District Court for the
Eastern District of Illinois, East St. Louis Division.
No. CV 76-3154 - James L. Foreman, Judge.

Argued April 20, 1979 - Decided August 13, 1979

Before TONE AND BAUER, Circuit Judges and Solomon, Senior District Judge*.

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* The Honorable Gus J. Solomon, Senior District Judge of the United States District Court for the district of Oregon, is sitting by designation.

BAUER, Circuit Judge. The appellants in this case instituted an action to enforce certain rights allegedly arising from 1) a preferential hiring agreement with the defendants-appellees (Count I) and 2) a consent decree entered into by the defendant-appellee, Local 520, International Union of Operating Engineers (Count II). In addition, the appellants sought damages and other affirmative relief under 42 U.S.C. §1981 for alleged racially discriminatory practices of the defendants-appellees. The district court dismissed Counts I and II for lack of jurisdiction and granted the defendants summary judgment on Count III. We reverse as to Counts I and II, and affirm as to Count III.

The basis for Count I of the appellants' complaint was the so-called Ogilvie Plan and a successor agreement, which provided for the maintenance of equal employment opportunities in the highway construction industry in Madison and St. Clair counties. The agreement was designed to eliminate any lingering vestiges of past discrimination by establishing a fixed ratio for job openings - specifically, one minority referral for every four non-minority referrals. Similarly, the consent decree entered into by the defendant union stated that "the union shall provide employment opportunities to 20% in the aggregate of referrals to highway construction in Madison and St. Clair counties to minority applicants."

In dismissing Counts I and II, the district court held that the appellants did not have a cause of action under 42 U.S.C. §1981 since the agreement represented a preferential hiring plan and §1981 provides only that all persons shall have the same rights "as is enjoyed by white citizens". We cannot agree, however, that the appellants' action is not maintainable under § 1981. In our view, the agreements create third party beneficiary rights in the white and black operating engineers who stand to benefit from the operation of the referral plan. The appellants' complaint alleges that the beneficiary rights of black engineers are not being recognized by the defendants-appellees because of racial considerations. In particular, the complaint alleges that the contractors have deprived the blacks of their beneficiary rights by accepting whites who are masquerading as minority group members to satisfy the 20 percent requirement. We find these allegations of a racially motivated deprivation of beneficiary rights sufficient to maintain an action under §1981. It follows that the district court has jurisdiction over Counts I and II under 28 U.S.C. §1343.

As grounds for dismissing Count II, the court also held that "a consent decree may not be attacked in a new case prior to seeking a remedy in the previous case." Here, however, the appellants are seeking not to attack the consent decree, but to

recover on the basis of beneficiary rights which it confers. We thus find no basis in the above principle for dismissing Count II of the appellants' complaint.

As to Count III, the appellants' counsel stated at oral argument that he was not asking this Court to reverse the district court's judgment against the individual plaintiffs. We are unable to find any theory that would support Count III as to the entire class of plaintiffs other than those embodied in Counts I and II. Accordingly, we affirm the lower court's judgment on Count III.

AFFIRMED IN PART AND REVERSED IN PART.

A true Copy:

Teste:

Clerk of the United States Court of
Appeals for the Seventh Circuit

APPENDIX B

United States Court of Appeals
For the Seventh Circuit
Chicago, Illinois 60604

August 13, 1979

Before

Hon. PHILIP W. TONE, Circuit Judge

Hon. WILLIAM J. BAUER, Circuit Judge

Hon. GUS J. SOLOMON, Senior Circuit Judge*

JAMES JONES, et al., Plaintiffs-Appellants, No. 78-1815 vs. LOCAL 520, INTERNATIONAL UNION OF OPERATING ENGINEERS, et al., Defendants-Appelles.	Appeal from the United States District Court for the Eastern District of Illinois East St. Louis Division. No. CV 76-3154 JAMES L. FORMAN, Judge

Opinion by Judge Bauer

This cause came on to be heard on the transcript of the record from the United States District Court for the Eastern District of Illinois, East St. Louis Division, and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this court that the judgment of the said District Court and in this cause appealed from be, and the same is hereby, AFFIRMED IN PART, and REVERSED IN PART, in accordance with the opinion of this court filed this date. Costs awarded to the plaintiffs-appellants.

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* The Honorable Gus J. Solomon, Senior District Judge of the United States District Court for the district of Oregon, is sitting by designation.

APPENDIX C

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF ILLINOIS

JAMES JONES, et al.,
Plaintiffs,

v s .

LOCAL 520, INTERNATIONAL UNION OF OPERATING ENGINEERS, et al.,
Defendants.

CIVIL NO. 763154

ORDER
(Filed April 21, 1977)

FOREMAN, Judge:

Before the Court are plaintiffs' First Amended Complaint and eighteen Motions to Dismiss filed on behalf of the various defendants.[1] Also, under advisement are Supplemental Motion of Defendant Operating Engineers Local 520 for Dismissal of Complaint of Plaintiffs as to it with Prejudice, for Punitive Ac-

[1] Motion of Defendant Local 520, International Union of Operating Engineers for Dismissal of Complaint and in the Alternative to Strike Certain Paragraphs of the Complaint filed August 11, 1976. Motion to Strike Complaint and Dismiss Cause - filed August 11, 1976. Motion of Defendant Hoeffken Bros., Inc. to Dismiss and In the Alternative to Strike Certain Paragraphs - filed August 17, 1976. Motion of Defendant J. J. Altman and Co. to Dismiss or Motion for Summary Judgment or Alternative to Strike Certain Paragraphs -filed August 17, 1976. Motion of Defendant H. H. Hall Construction Co., to Dismiss and in the Alternative to Strike Certain Paragraphs - filed August 17, 1976. Motion of Defendant G. Helmkamp Excavating & Trucking Co., to Dismiss and in the Alternative to Strike Certain Paragraphs - filed August 17, 1976. Motion of Defendant Calhoun County Contracting Corp. to Dismiss and in the Alternative to Strike Certain Paragraphs - filed August 17, 1976. Motion of Defendant

tion Against Counsel for Plaintiffs, for Costs and for Other Relief, which was filed on January 5, 1977, and plaintiffs' Motion for Leave to File Amended Complaint. Leave to file Amended Complaint is GRANTED. The remainder of the motions will be discussed in the body of this Order.

Because this case has become rather complicated, the Court will briefly summarize the parties' positions as gleaned from the pleadings, briefs and the oral arguments. The plaintiffs Amended Complaint eliminates some of the objections raised in defendants' Motions to Dismiss, and only the objections which still apply will be considered.

Plaintiffs are present or former members of Local 520, International Union of Operating Engineers who claim racial discrimination in their employment in the highway construction industry. Jurisdiction is claimed to exist pursuant to 28 U.S.C. §1343(4) and 28 U.S.C. §1346. Count I of plaintiffs' complaint

Thompson Asphalt Co. to Dismiss and in the Alternative to Strike Certain Paragraphs - filed August 17, 1976. Motion of Defendant Charles E. Mahoney Co. to Dismiss and in the Alternative to Strike Certain Paragraphs - filed August 17, 1976. Motion of the Defendant The Rust Company, Inc., to Dismiss and in the Alternative to Strike Certain Paragraphs - filed August 17, 1976. Motion of Defendant Keeley Bros. Contracting Co. to Dismiss and in the Alternative to Strike Certain Paragraphs - filed August 17, 1976. Motion of Defendant Reese Construction Co. to Dismiss and in the Alternative to Strike Certain Paragraphs - filed August 17, 1976. Motion of Defendants, Southern Illinois Builders Association and Southern Illinois Contractors Association to Dismiss or in the Alternative Motion to Strike and Motion to Make More Definite and Certain - filed August 17, 1976. Motion to Dismiss - filed September 15, 1976. First Amended Motion for Dismissal of Complaint - filed October 15, 1976. Motion of Operating Engineers for Dismissal of Complaint of Plaintiffs as to it, with Prejudice - filed November 18, 1976. Motion to Strike Certain Portions of Plaintiffs' First Amended Complaint as they Relate to Defendants Southern Illinois Builders Association and Southern Illinois Contractors Association, or in the Alternative to Declare the Southern Illinois Builders Association and the Southern Illinois Contractors Association as Formal Parties Only Against Whom No Relief May be Granted-filed February 2, 1977.

alleges that defendants are not abiding by the terms of "An Agreement to Facilitate and Maintain Equal Employment Opportunity for Highway Construction in Madison and St. Clair Counties" (See Exhibit A attached to Complaint), specifically the provision that no less than 20% of all individuals working in the highway industry in Madison/St. Clair Counties Illinois would be minorities.[2] There is also a charge that Local 520 utilizes a discriminatory seniority system. In Count I, no allegations are made against either the Federal or State Government except for paragraph 4.[3] The only allegations concerning any wrongful conduct are directed against the Union, the individual contractors and the builders and contractors associations. Count I also states that it is based on Presidential Executive Order 11246 (See plaintiffs' exhibit 1).[4] Count II of the Complaint, after restating Count I, alleges that defendant Local 520 has not complied with the consent decree entered in a related case, *EEOC* v. *International Union of Operating Engineers, Local 520 et al.*, 69-C-9. Count III realleges Counts I and II and in addition sets out a claim that the defendant contractors and defendant union have violated plaintiffs' constitutional rights "by referring as minorities persons who are not 'Indians' ", and by refusing "to refer plaintiffs to employment in the highway construction industry in other than Madison/St. Clair Counties or in areas other than in the highway construction industry."

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[2] Plaintiffs claim that whites are classified as Indian in order to falsely fill the minority quota.

[3] "4. That the United States Department of Transportation and the Illinois Department of Transportation have the ultimate responsibility for enforcing the equal employment opportunity provisions relating to the employment of the plaintiffs herein."

[4] Executive Order 11246 provides that contractors involved in government work must comply with the law and not discriminate on the basis of race. It authorizes the Secretary of Labor to investigate any alleged violations. Enforcement is left to the Secretary of Labor.

Defendant, Local 520, International Union of Operating Engineers has filed a Motion to Dismiss claiming that the Court lacks jurisdiction over Count I pursuant to 42 U.S.C. §1981 as the quota specifications of Exhibit A requires preferential treatment, that the seniority system employed by the union and objected to by plaintiffs is the one mandated by this Court in *EEOC* v. *International Union of Operating Engineers et al.*, 69-C-9, and that the statute of limitations precludes this action. Count II of the complaint is challenged by defendant Local 520 as a collateral attack on this court's earlier decree in Civil 69-9. Finally, Count III is objected to on the ground that it is precluded by the statute of limitations found in the Illinois Fair Employment Practices Act. In its First Amended Motion for Dismissal of Complaint, defendant raises *res judicata* as a bar to this action.[5]

Defendants Southern Illinois Builders Association and Southern Illinois Contractors Association have filed the same Motion to Dismiss. It is their claim that neither association has "the authority to direct the business affairs of any employer member", and that neither association employs individuals in the construction trades. They further argue that no relief has been requested against either organization. A Motion to Strike filed by Southern Illinois Builders and Southern Illinois Contractors on February 2, 1977 also asserts *res judicata* as a ground for granting the motion.

Next, defendants, Hoeffken Bros., Inc., Calhoun County Contracting Corp., Charles E. Mahoney Co., Thompson Asphalt Co., G. Helmkamp Excavating & Trucking Co., H. H. Hall Construction Co., The Rust Company, Inc., Kelley Bros. Contracting Co., Reese Construction Co.[6] have filed identical

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[5] See *EEOC* v. *International Union of Operating Engineers*, Civ. 69-9 (E. Dist. Ill.); *Southern Illinois Builders Association* v. *Ogilvie*, 327 F.Supp. 1154, aff'd. 471 F.2d 680 (7th Cir. 1972); *United States* v. *Operating Engineers Local 520*, 476 F.2d 1201 (7th Cir. 1973).

Motions to Dismiss claiming that neither plaintiffs nor these defendants were signatories to the agreement previously designated as Exhibit A, that administrative remedies under the agreement have not been pursued, that 42 U.S.C. §1981 can not be used as the basis for a complaint to secure preferential hiring and further that no relief is being sought against these defendants. It is also argued that even if the agreement to employ 20% minorities is binding on these defendants, the goal is to achieve 20% minority employment in the two county area; an individual contractor need not employ 20% minority. Finally defendants claim that attorneys fees are not recoverable in the present action, and move to dismiss that part of the complaint. See *Alyeska Pipeline Service Company* v. *The Wilderness Society, et al.*, 421 U.S. 240 (1975).

The United States and the Secretary of the Department of the Treasury have moved to dismiss the complaint for failure to state a claim upon which relief may be granted. The Government points out that it is not alleged that either the Department of Treasury or its Secretary was a party to the agreement which forms the basis of Count I or that either possessed any contractural or statutory enforcement duties with respect to such agreement. The only allegation concerning the United States in Count I is contained in paragraph 4 (See footnote 3 of this Order). In Count II there are two references to the United States. First, it is alleged that a consent decree was entered into by the Equal Employment Opportunity Commission (EEOC) with the other defendants in *United States* v. *International Union of Operating Engineers, Local 520,* 69-C-9". Second, it is alleged that the EEOC "has the responsibility for overseeing said decree." The only claim against the United States in Count III is contained in paragraph 6 and states as follows: "that the

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[6]. Defendant J. J. Altman and Co. filed the same Motion to Dismiss. However, pursuant to the parties agreement on October 8, 1976, defendant J. J. Altman and Co. was dismissed from the case.

United States of America". . .has "suffered and permitted the defendant contractors and union to violate the agreements as aforesaid." Finally, it is argued by the Government that no specific relief is requested against the United States in any of the three counts.

The Governor of the State of Illinois and the Illinois Department of Transportation have moved to dismiss, claiming that the Court lacks jurisdiction under Illinois law and the Eleventh Amendment to the Constitution of the United States of America.[7] It is also alleged that this Court "lacks jurisdiction in that as a matter of law this Court will presume that the State will not commit a wrong against a citizen. . ."[8]

The Court has carefully studied this complaint because of the important issues it raises and finds that the Motions to Dismiss must be GRANTED with respect to Counts I and II, but will be DENIED with respect to Count III. My reasons and the authorities upon which I rely are as follows.

The Court lacks jurisdiction pursuant to Count I. 28 U.S.C. §1343 will only support jurisdiction if the action is properly maintainable under 42 U.S.C. §1981. 42 U.S.C. §1981 essentially provides that all persons shall have the same rights "as is enjoyed by white citizens". This section does not require that persons be accorded preferential treatment because of their race. It is not an affirmative action program,[9] *Long* v. *Ford Motor Co.*, 496 F.2d 500 (6th Cir. 1974). Here Count I complains that contrary to the agreement, the defendant contractors have not employed 20% minorities. There are no allegations that plaintiffs have received dissimilar treatment from white persons. The

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[7] Apparently the State is unaware of the long list of cases finding the Eleventh Amendment does not bar prospective injunctive relief. See *Ex parte Young,* 209 U.S. 123 (1908).

[8] This latter claim is utterly frivolous and merits no consideration.

[9] Section 1981 does not impose affirmative action in hiring and training minority citizens notwithstanding that such obligation is imposed as a precondition to being awarded a Government contract. Exec. Order No. 11246, 3 C.F.R. 418 (1972).

complaint contains only allegations that chicanery is being employed to classify whites as "Indians" in order to meet the required quotas of the "agreement". The only claim of unequal treatment is the claim that the union employs a discriminatory seniority system. However, since this claim has also been adopted in Count III, it is best considered there along with other allegations directed against the union defendant.

Exec. Order 11246, 3 C.F.R. 418 (1972) does not change this result as it specifically provides for enforcement through administrative prodecures. Sanctions and penalties may be imposed under Exec. Order 11246 by the Secretary of Labor including both of the following: a recommendation to EEOC or the Department of Justice that an action be instituted pursuant to Title VII, and the right to cancel present Government contracts and prohibit further contracts. Exec. Order 11246 does not provide authority for a lawsuit pursuant to sections 1343 or 1331.

Finally, it does not appear to the Court that 42 U.S.C. §1346 will support jurisdiction. §1346(a) requires that the claim be for an amount "not exceeding $10,000." Here each plaintiff seek $35,000. in damages. §1346(b), the Federal Tort Claims Act requires a wrongful act or omission of any employee of the Government. However, plaintiffs have not identified a wrongful act or omission on the part of the Government. Also, no allegations are made concerning the fulfillment of the jurisdictional prerequisite to §1346, the exhaustion of administrative remedies.[10] See 28 U.S.C. §2401 (a tort claim against the United States must be presented "to the appropriate Federal Agency within two years").

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[10] The Court reserves the issue of whether jurisdiction under 28 U.S.C. §1346 would ever be proper in this case.

Count II is a claim that the consent decree entered in a previous case is not being enforced. Plaintiffs apparently believe that they lack standing as third party beneficiaries to enforce compliance in Civ. 69-9, as they were not parties to that case and as the decree entered provides specifically for enforcement by the United States Government. See *Data Publishing Financial & General Corp.* v. *International Business Machines Corp.*, 430 F.2d 1277 (6th Cir. 1970). The Court recognizes that this standing problem may exist. However, the same problem will exist whether it is raised in the original case or in a subsequent case. Therefore, it should have no bearing on the decision of whether noncompliance with a previous decree may be raised in a new case.

The general rule is that where a court's order or decree is disobeyed a civil contempt proceeding may be instituted by the party primarily in interest in the original case. *Williams* v. *Iberville Parish School Board,* 273 F.Supp. 542 (E.D. La. 1967). It has also been held that a consent decree may not attacked in a new case prior to seeking a remedy in the previous case. See *Construction I. C. Com.* v. *International U. of O. E. Etc.*, 67 F.R.D. 664 (E.D. Mo. 1975). Therefore, for the foregoing reasons, I am constrained to grant the Motions to Dismiss with respect to Count II as to all defendants.

Count III stands on a different footing from the other two counts. Plaintiffs allege in Count III that defendant Local 520 operates a discriminatory seniority system. (See paragraph 13 of Count I), that the defendant contractors and Local 520 have referred white persons "to jobs and geographical areas to which plaintiffs are not referred", and that defendant contractors "have failed and refused to employ the plaintiffs at their trade because of the plaintiffs' race and color". These are the very types of practices which §1981 is directed against. Defendants contentions concerning the statute of limitations and the seniority system raises facts outside the pleadings and may not

properly be considered at this stage of the litigation.[11] Therefore, the Motion to Dismiss Count III with respect to the union and individual contractors is DENIED.

Paragraph 6 of Count III of the First Amended Complaint charges the United States and State of Illinois with permitting such conduct. Under the *Conley* v. *Gibson*[12] standard for Motions to Dismiss, the Court cannot say that the plaintiffs can prove no set of facts in support of their claim which would entitle them to relief. Therefore, the Motions to Dismiss Count III with respect to the United States, the Secretary of the Department of Transportation, the former Governor of Illinois and the Illinois Department of Transportation is DENIED at this time.

The Motion to Dismiss with respect to Count III is GRANTED as to Southern Illinois Builders Association and Southern Contractors Association as neither is mentioned in Count III.

Next the Court will decide the various motions to strike on file. Defendants, Southern Illinois Builders Association, and Southern Illinois Contractors Association's Alternative Motion to Strike and Alternative Motion to Make More Definite and Certain need not be decided as the Motion to Dismiss was already granted and they are no longer defending this action. The individual contractors have all filed identical Alternative Motions to Strike and Alternative Motions to Make More Definite and Certain. These motions are DENIED with respect to all contractors still parties in this suit. Attorneys fees may be recoverable in a 42 U.S.C. §1981 suit. See Civil Rights At-

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[11] The possibility of whether these issues were decided in 69-9 can not properly be determined at this juncture, but the Court reserves a right to consider it, if properly presented, at a later date.

[12] 355 U.S. 41 (1957).

torneys' Fees Award Act of 1976, P.L. 94-559. Defendants may obtain more specific information through discovery. The complaint provides enough facts to inform them of the claim. Defendant Local 520's Alternative Motion to Strike is similarly DENIED.

In conclusion, the Court notes that there are still pending discovery problems in this case. The parties are ordered to immediately proceed with discovery. If the Answers to the Interrogatories of Operating Engineers Local 520 filed on August 9, 1976 have not been filed, they will be filed or objected to within ten days of the date of this order. Plaintiffs shall submit to the taking of their depositions as noticed by defendants at a mutually convenient time and place. At this time, the Motion of Operating Engineers for Dismissal of Complaint of Plaintiffs as to it, with Prejudice, dated November 18, 1976, and Supplemental Motion of Defendant Operating Engineers Local 520 for Dismissal of Complaint of Plaintiffs as to it, with Prejudice for Punitive Action Against Counsel for Plaintiffs, for Costs and for Other Relief, filed on January 5, 1977, are DENIED.

CONCLUSION

The Motion for Leave to File a First Amended Complaint is GRANTED. Counts I and II are hereby DISMISSED. Illinois Builders Association and Southern Illinois Contractors Association's Motions to Dismiss are GRANTED. In all other respects the Motions to Dismiss as directed against Count III are DENIED. The Motions to Strike and Motions for a More Definite Statement are DENIED. The Motions to Dismiss filed on November 18, 1976 and January 5, 1977 are likewise DENIED.

DATED: April 21, 1977

/s/ James L. Foreman
UNITED STATES DISTRICT JUDGE

In The United States District Court
For The Eastern District of Illinois

James Jones, et al,
Plaintiffs,
vs.
Local 520, Operating Engineers,
Et al,
Defendants,

Civil No. 76 3154

ORDER

(Filed May 15, 1978)

This cause coming on to be heard on this 15 day of May, 1978, upon the motion of the defendant, Calhoun County Contracting Corporation, for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure, and the plaintiff having expressly waived the ten (10) day rule set forth in Rule 56(c), and the court having reviewed the motions and the supporting affidavit and being fully advised in the premises finds:

1. That all of the party plaintiffs who have testified on depositions, to wit: JAMES JONES, TILLMAN WILLIAMS, PETER BECKWITH, WALTER MURPHY, DONNELL JORDAN, EUGENE MOORE, VAN CLARK, BERNARD PITTMAN, BOBBY REDD, DELARETT SMITH, CHARLES GATLIN, GREGG HATCHETT, JOSEPH JORDON, LOUIS NORTON, WILLIE PITTMAN, HUE EDMOND, DECATOR HARRIS, LAWRENCE RHODLES, NORRIS HORTON, R. L. PETERSON, WILLIE GREGORY, ROBERT ARMSTEAD, LLOYD BENNETT, TERRY KENNEDY, and WARREN D. McCLAIN, have stated that they were never refused employment by a defendant contractor when referred for employment to any defendant contractor by the defendant, Local 520, Operating Engineers.

2. That the following named plaintiffs TILLMAN WILLIAMS, WALTER MURPHY, DONNELL JORDAN, ELZY FENTON, DELARETT SMITH, CHARLES GATLIN, GREGG HATCHETT, ALBERT LEE, JR., HUE EDMOND, JOHN SADDLER have not been referred to nor have they been employed by the defendant, Calhoun County Contracting Corporation, and therefore fail to prove an actionable violation of Title 42, Section 1981, USC and as to the defendant, Calhoun County Contracting Corporation, judgment is hereby entered against each such plaintiffs.

3. That the following named parties plaintiff, JAMES JONES, WARREN McCLAIN, PETER BECKWITH, EUGENE MOORE, VAN CLARK, BERNARD PITTMAN, BOBBY REDD, RONALD MARION, THOMAS GLENN, JOSEPH JORDAN, LOUIS NORTON, WILLIE PITTMAN, DECATOR HARRIS, LAWRENCE RHODLES, NORRIS HORTON, R. L. PETERSON, ROBERT ARMSTEAD, LLOYD BENNETT, TERRY KENNEDY have testified under oath on deposition that they had been referred to the defendant contractor, Calhoun County Contracting Corporation, for employment by the defendant, Local 520; and that while employed by the defendant, Calhoun County Contracting Corporation, were not discriminated against because of race and color; and as to the defendant, Calhoun County Contracting Corporation, judgment against each such plaintiff is hereby entered.

ENTERED this 15th day of May, 1978.

/s/ JAMES L. FOREMAN
CHIEF JUDGE

In The United States District Court
For The Eastern District of Illinois

James Jones, et al,
Plaintiffs,
vs.
Local 520, International Union of Operating Engineers,
Et al,
Defendants,
Civil No. 76 3154

JUDGMENT

(Filed May 16, 1978.)

This matter came before the Court, Honorable James L. Foreman, Chief Judge, on the motion of the defendant, Calhoun County Contracting Corporation, for summary judgment, and the issues having been considered and a decision having been duly made,

It is Ordered and Adjudged that judgment is entered in favor of the defendant, Calhoun County Contracting Corporation, and against the plaintiffs.

Entered at East St. Louis, Illinois this 16th day of May, 1978.

/s/ PHILLIP L. SWIHART
PHILLIP L. SWIHART, CLERK PRO-TEM

In The United States District Court
For The Eastern District of Illinois

James Jones, et al,
Plaintiffs,
vs.
Local 520, Operating Engineers,
Et al,
Defendants,
Civil No. 76 3154

ORDER

(Filed May 15, 1978)

This cause coming on to be heard on this 15th day of May, 1978, upon the motion of the defendant, H. H. Hall Construction Co., for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure, and the plaintiff having expressly waived the ten (10) day rule set forth in Rule 56(c), and the court having reviewed the motions and the supporting affidavit and being fully advised in the premises finds:

1. That all of the party plaintiffs who have testified on depositions, to wit: JAMES JONES, TILLMAN WILLIAMS, PETER BECKWITH, WALTER MURPHY, DONNELL JORDON, EUGENE MOORE, VAN CLARK, BERNARD PITTMAN, BOBBY REDD, DELARETT SMITH, CHARLES GATLIN, GREGG HATCHETT, JOSEPH JORDON, LOUIS NORTON, WILLIE PITTMAN, HUE EDMOND, DECATOR HARRIS, LAWRENCE RHODLES, NORRIS HORTON, R. L. PETERSON, WILLIE GREGORY, ROBERT ARMSTEAD, LLOYD BENNETT, TERRY KENNEDY, and WARREN D. McCLAIN, have stated that they were never refused employment by a defendant contractor when referred for employment to any defendant contractor by the defendant, Local 520, Operating Engineers.

2. That the following named plaintiffs LLOYD BENNETT, HUE EDMOND, THOMAS GLENN, DONNELL JORDON, JOSEPH JORDON, TERRY KENNEDY, ALBERT LEE, JR., WARREN McCLAIN, REGGIE MARION, JOSEPH MACLAIN, WALTER MURPHY, SAMMIE PARLCER, R. L. PETERSON, BERNARD PITTMAN, WILLIE PITTMAN, GEORGE RHODLES, JOHN SADDLER, ELZY FELTON, DELARETT SMITH, and TILLMAN WILLIAMS have not been referred to nor have they been employed by the defendant, H. H. Hall Construction Co., and therefore fail to prove an actionable violation of Title 42, Section 1981, USC and as to the defendant, H. H. Construction Co.,judgment is hereby entered against each such plaintiffs.

3. That the following named parties plaintiff, ROBERT ARMSTEAD, PETER BECKWITH, VAN CLARK, CHARLES GATLIN, WILLIE GREGORY, DECATOR HARRIS, NORRIS HORTON, JAMES JONES, LOUIS NORTON, BOBBY REDD, and LAWRENCE RHODLES have testified under oath on deposition that they had been referred to the defendant contractor, H. H. Hall Construction Co., for employment by the defendant, Local 520; and that while employed by the defendant, H. H. Hall Construction Co., were not discriminated against because of race and color; and as to the defendant, H. H. Hall Construction Co., judgment against each such plaintiff is hereby entered.

4. That the following named plaintiffs, GREG HATCHETT, EUGENE MOORE have made an allegation against the defendant, H. H. Hall Construction Co., of discrimination because of race and color under Title 42, Section 1981, USC; that the court has read and examined the affidavits for summary judgment produced by the defendant, H. H. Hall Construction Co., and having received no counter-affidavits, rules that the allegations of each such plaintiffs does not constitute a violation of Title 42, Section 1981, USC as a matter of law and therefore,

judgment is hereby entered against each of such named plaintiffs GREG HATCHETT, EUGENE MOORE, and in favor of the defendant, H. H. Hall Construction Co.

ENTERED this 15th day of May, 1978.

/s/ JAMES L. FOREMAN
CHIEF JUDGE

In The United States District Court
For The Eastern District of Illinois

James Jones, et al, Plaintiffs, vs. Local 520, International Union of Operating Engineers, Et al, Defendants,	Civil No. 76 3154

JUDGMENT

(Filed May 16, 1978)

This matter came before the Court, Honorable James L. Foreman, Chief Judge, upon the motion of the defendant, H. H. Hall Construction Company, for summary judgment, and the issues having been considered and a decision having been duly rendered,

It is Ordered and Adjudged that judgment is entered in favor of the defendant, H. H. Hall Construction Company, and against the plaintiffs.

Entered at East St. Louis, Illinois this 16th day of May, 1978.

/s/ PHILLIP L. SWIHART
PHILLIP L. SWIHART, CLERK PRO-TEM

In The United States District Court
For The Eastern District of Illinois

James Jones, et al,
Plaintiffs,
vs.
Local 520, Operating Engineers,
Et al,
Defendants,
Civil No. 76 3154

ORDER

(Filed May 15, 1978)

This cause coming on to be heard on the 15th day of May, 1978, upon the motion of the defendant, G. Helmkamp Excavating and Trucking Co., for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure, and the plaintiff having expressly waived the ten (10) day rule set forth in Rule 56(c), and the court having reviewed the motions and the supporting affidavit and being fully advised in the premises finds:

1. That all of the party plaintiffs who have testified on depositions, to wit: JAMES JONES, TILLMAN WILLIAMS, PETER BECKWITH, WALTER MURPHY, DONNELL JORDON, EUGENE MOORE, VAN CLARK, BERNARD PITTMAN, BOBBY REDD, DELARETT SMITH, CHARLES GATLIN, GREGG HATCHETT, JOSEPH JORDON, LOUIS NORTON, WILLIE PITTMAN, HUE EDMOND, DECATOR HARRIS, LAWRENCE RHODLES, NORRIS HORTON, R. L. PETERSON, WILLIE GREGORY, ROBERT ARMSTEAD, LLOYD BENNETT, TERRY KENNEDY, and WARREN D. McCLAIN, have stated that they were never refused employment by a defendant contractor when referred for employment to any defendant contractor by the defendant, Local 520, Operating Engineers.

2. That the following named plaintiffs ROBERT ARMSTEAD, PETER BECKWITH, LLOYD D. BENNETT, VAN CLARK, HUE EDMOND, THOMAS GLENN, WILLIE GREGORY, ELZY FELTON, DECATOR HARRIS, GREG HATCHETT, NORRIS HORTON, JAMES JONES, DONNELL JORDON, JOSEPH JORDON, TERRY KENNEDY, ALBERT LEE, JR., WILLIAM D. McCLAIN, JOSEPH MACLAIN, REGGIE MARION, EUGENE MOORE, SAMMIE PARLCER, BERNARD PITTMAN, DELARETT SMITH, GEORGE RHODLES, TILLMAN WILLIAMS, and JOHN SADDLER have not been referred to nor have they been employed by the defendant, G. Helmkamp Excavating and Trucking Co., and therefore fail to prove an actionable violation of Title 42, Section 1981, USC and as to the defendant, G. Helmkamp Excavating and Trucking Co. judgment is hereby entered against each such plaintiffs.

3. That the following named plaintiffs, CHARLES GATLIN, LOUIS NORTON, R. L. PETERSON, BOBBY REDD, LAWRENCE RHODLES have testified under oath on deposition that they had been referred to the defendant contractor, G. Helmkamp Excavating and Trucking Co., for employment by the defendant, Local 520; and that while employed by the defendant, G. Helmkamp Excavating and Trucking Co., were not discriminated against because of race and color; and as to the defendant, G. Helmkamp Excavating and Trucking Co., judgment against each such plaintiff is hereby entered.

4. That the following named plaintiffs, WALTER MURPHY, WILLIE PITTMAN, have made an allegation against the defendant, G. Helmkamp Excavating and Trucking Co., of discrimination because of race and color under Title 42, Section 1981, USC; that the court has read and examined the affidavits for summary judgment produced by the defendant, G. Helmkamp Excavating and Trucking Co., and having received no counter-affidavits, rules that the allegations of each such plaintiffs does not constitute a violation of Title 42, Section 1981, USC as a matter of law and therefore, judgment is hereby

entered against each of such named plaintiffs WALTER MURPHY, WILLIE PITTMAN, and in favor of the defendant, G. Helmkamp Excavating and Trucking Co..

ENTERED this 15th day of May, 1978.

/s/ JAMES L. FOREMAN
CHIEF JUDGE

In The United States District Court
For The Eastern District of Illinois

James Jones, et al,
Plaintiffs,
vs.
Local 520, International Union of Operating Engineers,
Et al,
Defendants,
Civil No. 76 3154

JUDGMENT

(Filed May 16, 1978)

This matter came before the Court, Honorable James L. Foreman, Chief Judge, on the motion of the defendant, G. Helmkamp Excavating and Trucking Company, for summary judgment and the issues having been considered, and a decision having been duly rendered,

It is Ordered and Adjudged that judgment is entered in favor of the defendant, G. Helmkamp Excavating and Trucking Company and against the plaintiffs.

Entered at East St. Louis, Illinois this 16th day of May, 1978.

/s/ PHILIP L. SWIHART
PHILIP L. SWIHART, CLERK PRO-TEM

In The United States District Court
For The Eastern District of Illinois

James Jones, et al,
Plaintiffs,
vs.
Local 520, Operating Engineers,
Et al,
Defendants,
Civil No. 76 3154

ORDER

(Filed May 15, 1978)

This cause coming on to be heard on this 15th day of May, 1978, upon the motion of the defendant, HOEFFKEN BROS., INC., for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure, and the plaintiff having expressly waived the ten (10) day rule set forth in Rule 56(c), and the court having reviewed the motions and the supporting affidavit and being fully advised in the premises finds:

1. That all of the party plaintiffs who have testified on deposition, to wit: JAMES JONES, TILLMAN WILLIAMS, PETER BECKWITH, WALTER MURPHY, DONNELL JORDON, EUGENE MOORE, VAN CLARK, BERNARD PITTMAN, BOBBY REDD, DELARETT SMITH, CHARLES GATLIN, GREGG HATCHETT, JOSEPH JORDON, LOUIS NORTON, WILLIE PITTMAN, HUE EDMOND, DECATOR HARRIS, LAWRENCE RHODLES, NORRIS HORTON, R. L. PETERSON, WILLIE GREGORY, ROBERT ARMSTEAD, LLOYD BENNETT, TERRY KENNEDY, and WARREN D. McCLAIN, have stated that they were never refused employment by a defendant contractor when referred for employment to any defendant contractor by the defendant, Local 520, Operating Engineers.

2. That the following named plaintiffs JAMES JONES, DONNELL JORDON, EUGENE MOORE, ELZY FENTON, DELARETT SMITH, ALBERT LEE, JR., LOUIS NORTON, GEORGE RHODLES, LLOYD BENNETT, TERRY KENNEDY, SAMMIE PARKER, JOSEPH B. McCLAIN, have not been referred to nor have they been employed by the defendant, HOEFFKEN BROS., INC., and therefore fail to prove an actionable violation of Title 42, Section 1981, USC and as to the defendant, HOEFFKEN BROS., INC. judgment is entered against each such plaintiffs.

3. That the following named parties plaintiff, WALTER MURPHY, BERNARD PETTMAN, BOBBY REDD, CHARLES GATLIN, THOMAS GLENN, JOSEPH JORDON, HUE EDMOND, DECATOR HARRIS, LAWRENCE RHODLES, NORRIS HORTON, R. L. PETERSON, ROBERT ARMSTEAD, WARREN D. McCLAIN, have testified under oath on deposition that they had been referred to the defendant contractor, HOEFFKEN BROS., INC., for employment by the defendant, Local 520; and that while employed by the defendant, HOEFFKEN BROS., INC., were not discriminated against because of race and color; and as to the defendant, HOEFFKEN BROS., INC., judgment against each such plaintiff is hereby entered.

4. That the following named plaintiffs, TILLMAN WILLIAMS, PETER BECKWITH, VAN CLARK, GREGG HATCHETT, WILLIE PITTMAN, JOHN SADDLER, REGGIE MARION, WILLIE GREGORY, have made an allegation against the defendant, HOEFFKEN BROS., INC., of discrimination because of race and color under Title 42, Section 1981, USC; that the court has read and examined the affidavits for summary judgment produced by the defendant, HOEFFKEN BROS., INC., and having received no counter-affidavits, rules that the allegations of each such plaintiffs does not constitute a violation of Title 42, Section 1981, USC as a matter of law and therefore, judgment is hereby entered against each of such named plaintiffs TILLMAN WILLIAMS, PETER

BECKWITH, VAN CLARK, GREGG HATCHETT, WILLIE PITTMAN, JOHN SADDLER, REGGIE MARION and WILLIE GREGORY, and in favor of the defendant, HOEFFKEN BROS., INC..

ENTERED this 15th day of May, 1978.

/s/ JAMES L. FOREMAN
CHIEF JUDGE

In The United States District Court
For The Eastern District of Illinois

James Jones, et al,
Plaintiffs,

vs.

Local 520, International Union of Operating Engineers,
Et al,
Defendants,

Civil No. 76 3154

JUDGMENT
(Filed May 16, 1978)

This matter came before the Court, Honorable James L. Foreman, Chief Judge, on the motion of the defendant, Hoeffken Bros., Inc., for summary judgment, and the issues having been considered and a decision having duly rendered,

It is Ordered and Adjudged that judgment is entered in favor of the defendant, Hoeffken Bros., Inc., and against the plaintiffs.

Entered at East St. Louis, Illinois this 16th day of May, 1978.

/s/ PHILIP L. SWIHART
PHILIP L. SWIHART, CLERK PRO-TEM

In The United States District Court
For The Eastern District of Illinois

James Jones, et al,
Plaintiffs,
vs.
Local 520, Operating Engineers,
Et al,
Defendants,

Civil No. 76 3154

ORDER

(Filed May 15, 1978)

This cause coming on to be heard on this 15th day of May, 1978, upon the motion of the defendant, KEELEY BROS., CONTRACTING COMPANY, for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure, and the plaintiff having expressly waived the ten (10) day rule set forth in Rule 56(c), and the court having reviewed the motions and the supporting affidavit and being fulling advised in the premises finds:

1. That all of the party plaintiffs who have testified on depositions, to wit: JAMES JONES, TILLMAN WILLIAMS, PETER BECKWITH, WALTER MURPHY, DONNELL JORDON, EUGENE MOORE, VAN CLARK, BERNARD PITTMAN, BOBBY REDD, DELARETT SMITH, CHARLES GATLIN, GREGG HATCHETT, JOSEPH JORDON, LOUIS NORTON, WILLIE PITTMAN, HUE EDMOND, DECATOR HARRIS, LAWRENCE RHODLES, NORRIS HORTON, R. L. PETERSON, WILLIE GREGORY, ROBERT ARMSTEAD, LLOYD BENNETT, TERRY KENNEDY and WARREN D. McCLAIN, have stated that they were never refused employment by a defendant contractor when referred for employment to any defendant contractor by the defendant, Local 520, Operating Engineers.

2. That the following named plaintiffs HUE EDMOND, ELZY FENTON, DECATOR HARRIS, DONNELL JORDON, JOSEPH JORDON, TERRY KENNEDY, ALBERT LEE, JR., JOSEPH McCLAIN, WARREN MACLAIN, LOUIS NORTON, SAMMIE PARKER, BOBBY REDD, GEORGE RHODLES, and TILLMAN WILLIAMS have not been referred to nor have they been employed by the defendant, KEELEY BROS., CONTRACTING COMPANY, and therefore fail to prove an actionable violation of Title 42, Section 1981, USC and as to the defendant, KEELEY BROS., CONTRACTING COMPANY judgment is hereby against each such plaintiffs.

3. That the following named parties plaintiff, ROBERT ARMSTEAD, PETER BECKWITH, LLOYD BENNETT, GREGG HATCHETT, NORRIS HORTON, JAMES JONES, WALTER MURPHY, EUGENE MOORE, BERNARD PITTMAN, LAWRENCE RHODLES, have testified under oath on deposition that they had been referred to the defendant contractor, KEELEY BROS., CONTRACTING COMPANY, for employment by the defendant, Local 520; and that while employed by the defendant, KEELEY BROS., CONTRACTING COMPANY, were not discriminated against because of race and color; and as to the defendant, KEELEY BROS., CONTRACTING COMPANY, judgment against each such plaintiff is hereby entered.

4. That the following named plaintiffs, WILLIE GREGORY, CHARLES GATLIN, WILLIE PITTMAN, R. L. PETERSON, DELARETT SMITH, T. C. GLENN, VAN CLARK, have made an allegation against the defendant, KEELEY BROS., CONTRACTING COMPANY, of discrimination because of race and color under Title 42, Section 1981, USC; that the court has read and examined the affidavits for summary judgment produced by the defendant, KEELEY BROS., CONTRACTING COMPANY, and having received no counter-affidavits, rules that the allegations of each such plaintiffs does not constitute a violation of Title 42, Section 1981,

USC as a matter of law and therefore, judgment is hereby entered against each of such named plaintiffs and in favor of the defendant, KEELEY BROS., CONTRACTING COMPANY.

ENTERED this 15th day of May, 1978.

/s/ JAMES L. FOREMAN
U.S. DISTRICT JUDGE

In The United States District Court
For The Eastern District of Illinois

James Jones, et al,
Plaintiffs,
vs. Civil No. 76 3154
Local 520, International Union of Operating Engineers,
Et al,
Defendants,

JUDGMENT
(Filed May 16, 1978)

This matter came before the Court, Honorable James L. Foreman, Chief Judge, on the motion of the defendant, Keeley Bros. Contracting Company, for summary judgment, and the issue having been considered and a decision having been duly made,

It is Ordered and Adjudged that judgment is entered in favor of the defendant, Keeley Bros. Contracting Company and against the plaintiffs.

Entered at East St. Louis, Illinois this 16th day of May, 1978.

/s/ PHILLIP L. SWIHART
PHILLIP L. SWIHART, CLERK PRO-TEM

In The United States District Court
For The Eastern District of Illinois

James Jones, et al,
Plaintiffs,
vs. Civil No. 76 3154
Local 520, Operating Engineers,
Et al,
Defendants,

ORDER

This cause coming on to be heard on this 15th day of May, 1978, upon the motion of the defendant, Charles E. Mahoney Company, for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure, and the plaintiff having expressly waived the ten (10) day rule set forth in Rule 56(c), and the court having reviewed the motions and the supporting affidavit and being fully advised in the premises finds:

1. That all of the party plaintiffs who have testified on depositions, to wit: JAMES JONES, TILLMAN WILLIAMS, PETER BECKWITH, WALTER MURPHY, DONNELL JORDON, EUGENE MOORE, VAN CLARK, BERNARD PITTMAN, BOBBY REDD, DELARETT SMITH, CHARLES GATLIN, GREGG HATCHETT, JOSEPH JORDON, LOUIS NORTON, WILLIE PITTMAN. HUE EDMOND, DECATOR HARRIS, LAWRENCE RHODLES, NORRIS NORTON, R. L. PETERSON, WILLIE GREGORY, ROBERT ARMSTEAD, LLOYD BENNETT, TERRY KENNEDY and WARREN D. McCLAIN, have stated that they were never refused employment by a defendant contractor when referred for employment to any defendant contractor by the defendant, Local 520, Operating Engineers.

2. That the following named plaintiffs JAMES JONES, TILLMAN WILLIAMS, PETER BECKWITH, WALTER MURPHY, DONNELL JORDON, BERNARD PITTMAN, BOBBY REDD, ELZY FENTON, DELARETT SMITH, GREGG HATCHETT, THOMAS GLENN, ALBERT LEE, JR., LOUIS NORTON, WILLIE PITTMAN, HUE EDMOND, NORRIS HORTON, GEORGE RHODLES, R. L. PETERSON, JOHN SADDLER, REGGIE MARION, LLOYD BENNETT, TERRY KENNEDY, JOSEPH B. McCLAIN, WARREN McCLAIN have not been referred to nor have they been employed by the defendant, Charles E. Mahoney Company, and therefore fail to prove an actionable violation of Title 42, Section 1981, USC and as to the defendant, Charles E. Mahoney Company, judgment is hereby entered against each such plaintiffs.

3. That the following named parties plaintiff, Eugene Moore, Charles Gatlin, Decator Harris, Lawrence Rhodles, Willie Gregory, Robert Armstead, have testified under oath on deposition that they had been referred to the defendant contractor, Charles E. Mahoney Company, for employment by the defendant, Local 520; and that while employed by the defendant, Charles E. Mahoney Company, were not discriminated against because of race and color; and as to the defendant, Charles E. Mahoney Company, judgment against each such plaintiff is hereby entered.

4. That the following named plaintiffs, Van Clark, have made an allegation against the defendant, Charles E. Mahoney Company, of discrimination because of race and color under Title 42, Section 1981, USC as a matter of law and therefore, judgment is hereby entered against each of such named plaintiffs Van Clark, and in favor of the defendant, Charles E. Mahoney Company.

ENTERED this 15th day of May, 1978.

/ s / JAMES L. FOREMAN
CHIEF JUDGE

In The United States District Court
For The Eastern District of Illinois

James Jones, et al,
Plaintiffs,
vs.
Local 520, International Union of Operating Engineers, et. al.,
Defendants,
} Civil No. 763154

JUDGMENT

This matter came before the Court, Honorable James L. Foreman, Chief Judge, on the motion of the defendant, Charles E. Mahoney Company, for summary judgment, and the issues having been considered and a decision having been duly made,

It is Ordered and Adjudged that judgment is entered in favor of the defendant, Charles E. Mahoney Company and against the plaintiffs.

Entered at East St. Louis, Illinois this 16th day of May, 1978.

/s/ PHILLIP L. SWIHART, CLERK
PRO-TEM

In The United States District Court
For The Eastern District of Illinois

James Jones, et al,
Plaintiffs,
vs.
Local 520, Operating Engineers, Et al,
Defendants,
} Civil No. 76 3154

ORDER

This cause coming on to be heard on this 15th day of May, 1978, upon the motion of the defendant, Reese Construction Company, for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure, and the plaintiff having expressly waived the ten (10) day rule set forth in Rule 56(c), and the court having reviewed the motions and the supporting affidavit and being fully advised in the premises finds:

1. That all of the party plaintiffs who have testified on depositions, to wit: JAMES JONES, TILLMAN WILLIAMS, PETER BECKWITH, WALTER MURPHY, DONNELL JORDON, EUGENE MOORE, VAN CLARK, BERNARD PITTMAN, BOBBY REDD, DELARETT SMITH, CHARLES GATLIN, GREGG HATCHETT, JOSEPH JORDON, LOUIS NORTON, WILLIE PITTMAN, HUE EDMOND, DECATOR HARRIS, LAWRENCE RHODLES, NORRIS HORTON, R. L. PETERSON, WILLIE GREGORY, ROBERT ARMSTEAD, LLOYD BENNETT, TERRY KENNEDY and WARREN D. McCLAIN, have stated that they were never refused employment by a defendant contractor when referred for employment to any defendant contractor by the defendant, Local 520, Operating Engineers.

2. That the following named plaintiffs JAMES JONES, WILLIE PITTMAN, TILLMAN WILLIAMS, WALTER MURPHY, DECATOR HARRIS, NORRIS HORTON, EUGENE MOORE, VAN CLARK, BERNARD PITTMAN, REGGIE MARION, JOSEPH JORDAN, HUE EDMOND, LAWRENCE RHODLES, R. L. PETERSON, GEORGE RHODLES, JOHN SADDLER, ROBERT ARMSTEAD, LLOYD BENNETT, TERRY KENNEDY, JOSEPH McCLAIN, BOBBY REDD, ELZY FENTON, SAMMIE PARKER, DELARETT SMITH, CHARLES GATLIN, THOMAS GLENN, ALBERT LEE, JR. have not been referred to nor have they been employed by the defendant, Reese Construction Co, and therefore fail to prove an actionable violation of Title 42, Section 1981, USC and as to the defendant, Reese Construction Co., judgment is hereby entered against each such plaintiffs.

3. That the following named parties plaintiff, Peter Beckwith, Donnell Jordan, Willie Gregory, Warren D. McClain, have testified under oath on deposition that they had been referred to the defendant contractor, Reese Construction Co., for employment by the defendant, Local 520; and that while employed by the defendant, Reese Construction, were not discriminated against because of race and color; and as to the defendant, Reese Construction Co., judgment against each such plaintiff is hereby entered.

4. That the following named plaintiffs, Gregg Hatchett and Louis Norton, have made an allegation against the defendant, Reese Construction Co., of discrimination because of race and color under Title 42, Section 1981, USC; that the court has read and examined the affidavits for summary judgment produced by the defendant, Reese Construction Co., and having received no counter-affidavits, rules that the allegations of each such plaintiffs does not constitute a violation of Title 42, Section 1981, USC as a matter of law and therefore, judgment is hereby entered against each of such named plaintiffs Greg Hatchett and Louis Norton, and in favor of the defendant, Reese Construction Co.

ENTERED this 15th day of May, 1978.

/s/
U. S. DISTRICT JUDGE

In The United States District Court
For The Eastern District of Illinois

James Jones, et. al.,
Plaintiffs,
vs.
Local 520, International Union of Operating Engineers, et. al.,
Defendants.

Civil No. 76 3154

JUDGMENT

This matter comes before the Court, Honorable James L. Foreman, Chief Judge, on the motion of the defendant, Reese Construction Company, for summary judgment, and the issues having been considered and a decision having been duly made,

It is Ordered and Adjudged that judgment is entered in favor of the defendant, Reese Construction Company and against the plaintiffs.

Entered at East St. Louis, Illinois this 16th day of May, 1978.

PHILLIP L. SWIHART, CLERK
PRO-TEM

In The United States District Court
For The Eastern District of Illinois

James Jones, et al,
Plaintiffs,
vs.
Local 520, International Union of Operating Engineers, et. al.,
Defendants,

Civil No. 76-3154
(Filed May 16, 1978)

ORDER

This cause coming on to be heard on May 15, 1978 on the Motion for Summary Judgment of the defendant, Rust Construction Company, and the Court having heard arguments of counsel for the plaintiffs and the defendant, the plaintiffs by counsel having waived the ten-day service requirement of Federal Rule of Civil Procedure 56C, the Court having reviewed the pleadings, depositions, answers to interrogatories, and the affidavit attached to defendant's motion, and the Court being fully advised in the premises,

The Court finds that there is no genuine issue as to any material fact between the plaintiffs, Peter Beckwith, Joseph Jordan, Walter Murphy, Donnell Jordon, Eugene Moore, Delarett Smith, Charles Gatlin, Bobby Redd, Tillman Williams, Hue Edmond, Gregg Hatchett, Decator Harris, Norris Horton, Terry Kennedy, R. L. Peterson, Warren D. McClain, Willie Pittman, Louis Norton, Lloyd Bennett, Van Clark, Thomas Glenn, Bernard Pittman, Willie Gregory, Robert Armstead, Lawrence Rhodes, and James Jones and the defendant, Rust Construction Company;

The Court also finds as a matter of law there is no claim stated or evidenced against the defendant, Rust Construction Company, in any of said documents, by any of said plaintiffs, under 42 U.S.C. 1981, as stated in the motion;

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the defendant, Rust Construction Company's Motion for Summary Judgment is allowed and the Clerk is directed to enter judgment against the plaintiffs, Peter Beckwith, Joseph Jordan, Walter Murphy, Donnell Jordon, Eugene Moore, Delarett Smith, Charles Gatlin, Bobby Redd, Tillman Williams, Hue Edmond, Gregg Hatchett, Decator Harris, Norris Horton, Terry Kennedy, R. L. Peterson, Warren [sic]D. McClain, Willie Pittman, Louis Norton, Lloyd Bennett, Van Clark, Thomas Glenn, Bernard Pittman, [sic], Willie Gregory, Robert Armstead, Lawrence Rhodes and James Jones.

Dated this 16th day of May, 1978.

ENTER: /s/ James L. Foreman
DISTRICT JUDGE

In The United States District Court
For The Eastern District of Illinois

James Jones et. al.,
Plaintiffs,
vs.
Local 520, International Union of Operating Engineers, et. al.,
Defendants.
Civil No. 76 3154

JUDGMENT

This matter came before the Court, Honorable James L. Foreman, Chief Judge, on the motion of the defendant, Rust Construction Company, for summary judgment, and the issues having been considered and a decision having been duly rendered,

It is Ordered and Adjudged that judgment is entered in favor of the defendant, Rust Construction Company and against the plaintiffs.

Entered at East St. Louis, Illinois this 16th day of May, 1978.

/s/
PHILLIP L. SWIHART, CLERK
PRO-TEM

In The United States District Court
For The Eastern District of Illinois

James Jones, et al,
Plaintiffs,
vs.
Local 520, Operating Engineers, Et al,
Defendants,
Civil No. 76 3154

ORDER

This cause coming on to be heard on this 15th day of May, 1978, upon the motion of the defendant, Thompson Asphalt Co, for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure, and the plaintiff having expressly waived the ten (10) day rule set forth in Rule 56(c), and the court having reviewed the motions and the supporting affidavit and being fully advised in the premises finds:

1. That all of the party plaintiffs who have testified on depositions, to wit: JAMES JONES, TILLMAN WILLIAMS, PETER BECKWITH, WATER MURPHY, DONNELL JORDON, EUGENE MOORE, VAN CLARK, BERNARD PITTMAN, BOBBY REDD, DELARETT SMITH, CHARLES

GATLIN, GREGG HATCHETT, JOSEPH JORDON, LOUIS NORTON, WILLIE PITTMAN, HUE EDMOND, DECATOR HARRIS, LAWRENCE RHODLES, NORRIS HORTON, R. L. PETERSON, WILLIE GREGORY, ROBERT ARMSTEAD, LLOYD BENNETT, TERRY KENNEDY and WARREN D. McCLAIN, have stated that they were never refused employment by a defendant contractor when referred for employment to any defendant contractor by the defendant, Local 520, Operating Engineers.

2. That the following named plaintiffs ELZY FENTON, THOMAS GLENN, ALBERT LEE JR, NORRIS HORTON, GEORGE RHODLES, REGGIE MARION, JOSEPH B. McCLAIN, JAMES JONES, TILLMAN WILLIAMS, PETER BECKWITH, WALTER MURPHY, DONNELL JORDAN, EUGENE MOORE, BERNARD PITTMAN, BOBBY REDD, DELARETT SMITH, CHARLES GATLIN, GREGG HATCHETT, JOSEPH JORDAN, LOUIS NORTON, WILLIE PITTMAN, HUE EDMOND, DECATOR HARRIS, R. L. PETERSON, LLOYD BENNETT, TERRY KENNEDY & WARREN McCLAIN have not been referred to nor have they been employed by the defendant, Thompson Asphalt Co., and therefore fail to prove an actionable violation of Title 42, Section 1981, USC and as to the defendant, Thompson Asphalt Co., judgment is hereby entered aginst each such plaintiffs.

3. That the following named parties plaintiff, Van Clark, Willie Gregory, Lawrence Rhodles, have testified under oath on deposition that they had been referred to the defendant contractor, Thompson Asphalt Co., for employment by the defendant, Local 520; and that while employed by the defendant, Thompson Asphalt Co., were not discriminated against because of race and color; and as to the defendant, Thompson Asphalt Co., judgment is hereby entered against each such plaintiffs entered

4. That the following named plaintiffs, Robert Armstead, have made an allegation against the defendant, Thompson Asphalt Co., of discrimination because of race and color under Title 42, Section 1981, USC; that the court has read and examined the affidavits for summary judgment produced by the defendant, Thompson Asphalt Co., and having received no counter-affidavits, rules that the allegations of each such plaintiffs does not constitute a violation of Title 42, Section 1981, USC as a matter of law and therefore, judgment is hereby entered against each of such named plaintiffs Robert Armstead and in favor of the defendant, Thompson Asphalt Co.

ENTERED this 15 day of May, 1978.

/s/ JAMES L. FOREMAN
CHIEF JUDGE
In The United States District Court
For The Eastern District of Illinois

James Jones, et. al., Plaintiffs,
vs.
Local 520, International Union of Operating Engineers, et. al., Defendants.
} Civil No. 76 3154

JUDGMENT

This matter came before the Court, Honorable James L. Foreman, Chief Judge, on the motion of the defendant, Thompson Asphalt Company, for summary judgment, and the issues having been considered and a decision having been duly rendered,

It is Ordered and Adjudged that judgment is entered in favor of the defendant, Thompson Asphalt Company and against the plaintiffs.

Entered at East St. Louis, Illinois this 16th day of May, 1978.

/s/
PHILLIP L. SWIHART,
CLERK PRO-TEM

In The United States District Court
For The Eastern District of Illinois

James Jones, et. al., Plaintiffs,
vs.
Local 520, International Union of Operating Engineers, et. al., Defendants.
Civil No. 76 3154

JUDGMENT

This matter came before the Court, Honorable James L. Foreman, Chief Judge on the motion of the defendant contractors and upon the stipulation by plaintiffs' counsel that plaintiffs' sole basis of recovery against the defendant contractors under Count III of the complaint is the allegation that the defendant contractors knew or should have known that certain white operating engineers had designated themselves as American Indians on employment forms submitted to the State of Illinois and as such defendant contractors were charged with a duty under Title 42, U.S.C., Section 1981 to stop such reporting practice; and that as a result of the alleged duty as stated aforesaid, the State of Illinois failed to enforce a preferential hiring system under the "Agreement to Facilitate and Maintain Equal Employment Opportunity for Highway Contractors in Madison and St. Clair Counties", and the issues having been considered and a decision having been duly made,

It is Ordered and Adjudged that judgment is entered on Count III of the Compalint in favor of all defendant contractors and against all plaintiffs.

Entered at East St. Louis, Illinos this 16th day of May, 1978.

/s/ PHILLIP L. SWIHART,
CLERK PRO-TEM

In The United States District Court
For The Eastern District of Illinois

James Jones, et al, Plaintiffs,
vs.
Local 520, Operating Engineers, et. al., Defendants,
Civil No. 76 3154

JUDGMENT

This matter came before the Court, Honorable James L. Foreman, Chief Judge, on the motion of the defendant, Local 520, Operating Engineers, and upon the stipulation by plaintiffs' counsel that plaintiffs' sole basis of recovery against the defendant, Local 520, Operating Engineers under Count III of the complaint is the allegation that the defendant, Local 520, Operating Engineers knew or should have known that certain white operating engineers had designated themselves as American Indians on employment forms submitted to the State of Illinois and as such defendant, Local 520, Operating Engineers was charged with a duty under Title 42, U. S. C., Section 1981 to stop such reporting practice; and that as a result of the alleged duty as stated aforesaid, the State of Illinois failed to

enforce a preferential hiring system under the "Agreement to Facilitate and Maintain Equal Employment Opportunity for Highway Contractors in Madison and St. Clair Counties", and the issues having been considered and a decision having been duly made,

*It is Ordered and Adjudged, that judgment is entered on Count III of the Complaint in favor of defendant, Local 520, Operating Engineers and against the plaintiffs.

Entered at East St. Louis, Illinois this 16th day of May, 1978.

/s/ PHILLIP L. SWIHART,
CLERK PRO-TEM

In The United States District Court
For The Eastern District of Illinois

James Jones, et al,

Plaintiffs,

vs. Civil No. 76 3154

Local 520, International
Union of Operating
Engineers, et. al., Defendants,

ORDER

FOREMAN, Chief Judge:

Before the Court is a motion to dismiss or in the alternative a motion for summary judgment filed by the Illinois Department of Transportation and the Governor of the State of Illinois and plaintiffs' motion to inspect records.

Plaintiffs are present or former members of Local 520, International Union of Operating Engineers who claim racial

discrimination in their employment in the construction industry. In Count I of plaintiffs' amended complaint, plaintiffs, alleged that the defendant union and defendant contractors failed to abide by the terms of "An Agreement to Facilitate and Maintain Equal Employment Opportunity in Madison and St. Clair Counties", also known as the Ogilvie Plan. The plaintiffs specifically alleged that white persons are classified as Indian in order to fill the 20% minority quota mandated in the agreement. Plaintiffs' claim against the Illinois Department of Transportation was that the Department had the ultimate responsibility of enforcing the agreement and failed to fulfill that obligation. In Count II, plaintiffs alleged that the defendants failed to comply with the terms of a consent decree entered in *United States v. International Union of Operating Engineers, Local 520.* In Count III, plaintiffs alleged that defendant Local 520 operates a discriminatory hiring system. The plaintiffs further alleged that defendant union and defendant contractors refer whites to jobs and geographical areas to which plaintiffs are not referred and refuse to employ plaintiffs at their trade because of their race. The State of Illinois was charged with permitting this conduct.

On April 21, 1977, this Court dismissed Counts I and II of the complaint. The Court dismissed Count I because the "agreement" at issue was a preferential hiring plant o increase minority employment in the highway construction industry in Madison and St. Clair Counties, Jurisdiction under §1343 and §1981 only provides for equal treatment and not for affirmative action. Accordingly, Count I was dismissed for lack of jurisdiction. Count II was dismissed because the Court held that a consent decree may not be attacked in a new case prior to seeking a remedy in the previous case. The Court denied defendants' motion to dismiss Count III because the plaintiffs claimed that the defendant union and contractors treated them unequally with whites and the State of Illinois permitted them to engage in this conduct.

The Illinois Department of Transportation and the Governor of Illinois now move for summary judgment because they contend that plaintiffs' claim against them is based upon failure to enforce the Ogilvie Plan. They therefore asset that this Court is without jurisdiction under §1343 and §1981.

On June 15, 1977, this Court ordered plaintiffs to file an affidavit on or before June 27, 1977, detailing how they intend to hold the governor and the Department of Transportation liable on an agency theory. In response to that order, the plaintiffs submitted the affidavit of Mr. Clarence J. Clark. In his affidavit, Mr. Clark details his knowledge of the role of the State in formulating and implementing the Ogilvie Plan. Mr. Clark attached to his affidavit numberous exhibits which include specifications and terms for prospective bidders promulgated by the State, and reporting forms and affidavits contractors must file in conection with road and bridge construction.

In plaintiff's brief in opposition to the State's motion, the plaintiffs further clarify their position with respect to these defendants. On page 2 of that brief, the plaintiffs renew their arguments that they are third party beneficiaries to an agreement known as the Ogilvie Plan. The plaintiffs specifically state "Similarly, the claim by the plaintiffs here is that the State in allowing persons to be classified as Indians was depriving the plaintiffs, all of whom are black, from contractual rights which they had pursuant to the Ogilvie Plan."

This Court agrees that 42 U.S.C. §1981 guarantees to all persons the right to contract equal with the right of whites. The contractual rights of the plaintiffs pursuant to the Ogilvie Plan, however, are preferential rights, no equal. As the Court stated in its order of April 21, 1977, jurisdiction under §1981 does not provide for afirmative action. Thus, this Court is without jurisdiction under §1981 does not provide for affirmative action. Thus, this Court is without jurisdiction under §1981 on

these claims against the Illinois Department of Transportation and the Governor of Illinois. Accordingly, the motion for summary judgment filed by the Illinois Department of Transportation and the Governor of Illinois if GRANTED.

The plaintiffs have also filed a motion to inspect records held by the State. In that motion, the plaintiffs' counsel represented that the State would not voluntarily permit inspection as long as it was a party to this suit. By this order, the State is no longer a party to this suit. Accordingly, plaintiffs' motion to inspect is DENIED.

IT IS SO ORDERED.

DATED: May 15, 1978

/s/ James L. Foreman
Chief Judge

In The District Court of the United States
For The Eastern District of Illinois

James Jones, et al,
Plaintiffs,
vs.
Local 520, International Union of Operating Engineers, Et al,
Defendants,
Civil No. 76 3154

JUDGMENT

This matter came before the Court, Honorable James L. Foreman, Chief Judge, on the defendants, Illinois Department of Transportation and the Governor of the State of Illinois' mo-

tion to dismiss or in the alternative a motion for summary judgment, and the issues having been considered and a decision having been duly rendered,

It is Ordered and Adjudged that judgment is entered in favor of defendants, Illinois Department of Transportation and the Governor of the State of Illinois and against the plaintiffs.

Entered at East St. Louis, Illinois this 16th day of May, 1978

/s/ PHILLIP L. SWIHART
CLERK, PRO-TEM

NO. 79-709

Supreme Court, U. S.
FILED
NOV 30 1979
MICHAEL RODAK, JR., CLERK

IN THE SUPREME COURT OF THE

UNITED STATES OF AMERICA

LOCAL 520, INTERNATIONAL UNION
OF OPERATING ENGINEERS, et al.,

Petitioners,

vs.

JAMES JONES, et al.,

Respondents.

OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Edward L. Welch
Attorney at Law
216 North Main Street
P.O. Box 93
Edwardsville, IL 62025
(618) 656-4744; 271-3510

NO. 79-709

IN THE SUPREME COURT OF THE

UNITED STATES OF AMERICA

LOCAL 520, INTERNATIONAL UNION
OF OPERATING ENGINEERS, et al.,

Petitioners,

vs.

JAMES JONES, et al.,

Respondents.

OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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STATEMENT

The Respondents are black operating engineers who are seeking to enforce in Federal Court any rights they may have pursuant to a preferential hiring plan aimed at remedying past racial discrimination.

The Court of Appeals for the Seventh Circuit rejected Petitioners' contention that the Respondents could not enforce their rights under a remedial hiring agreement in Federal Court. The Petitioners continue to assert that employment rights under a remedial hiring agreement are unenforceable "preferential rights."

The Respondents oppose the granting of the Writ herein on the basis that the law is clear and in the alternative suggest that this Court summarily affirm the judgment of the Court below.

ARGUMENT

In asserting that the Writ should be granted the Petitioners contend that the holding by the Court of Appeals for the Seventh Circuit in the instant case that "an action to enforce preferen-

tial treatment of minority persons in employment is maintainable under 42 U.S.C. §1981 is in direct conflict with the decision of the Sixth Circuit in Long v. Ford Motor Company, 496 F.2d 500 (1974)...." (Pet. p. 11).

This assertion as it relates to the Court of Appeals for the Sixth Circuit obviously does not take into account the October 12, 1979, decision of that Circuit in Detroit Police Officers Assn. v. Young, ___F.2d___, 20 FEP Cases 1728 (6th Cir. 1979) (50/50 Promotion Preference).

The Sixth Circuit's opinion in Detroit Police Officers Assn. reviewed and applied the pronouncements by this Court in United Steelworkers of America v. Weber, 443 U.S. ___, 47 LW 4851, 20 FEP Cases 1 and Regents of the University of California v. Bakke, 438 U.S. 265, 17 FEP Cases 1000 (U.S. 1978).

In addition, this Court has recognized that the instant case has its genesis in blatant discriminatory practices. In Bakke, this Court stated at Footnote 40 that "Every decision upholding the requirement of preferential hiring

under the authority of Executive Order 11246 has emphasized the existence of previous discrimination as a predicate for the imposition of a preferential remedy. ... Southern Illinois Builders Assn. v. Ogilvie, 471 F.2d 680, 5 FEP Cases 229 (C.A. 7 1972); (underlining added).

The plaintiffs in the instant case are black individuals who were the beneficiaries of the Court's holding in Southern Illinois Builders Assn. Ogilvie, supra. The attempt to deprive them of their employment opportunities continues.

The Court of Appeals for the Seventh Circuit correctly held that the plaintiffs' rights are enforceable in Federal Court, especially in light of the history of discrimination practiced by some of the Petitioners. United States v. International Union of Operating Engineers, Local 520, et al., 476 F.2d 1201 (7th Cir. 1973); United States v. United Brotherhood of Carpenters and Joiners of America, Local 169, 457 F.2d 210, 4 FEP Cases 85 (7th Cir. 1972); cert. denied.

Thus, the law is clear with respect to the

enforcement of hiring plans aimed at remedying past discrimination, and the need for its enforcement in this case is equally clear.

CONCLUSION

The Petition for Writ of Certiorari should be denied. In the alternative, the decision of the Court of Appeals for the Seventh Circuit should summarily be affirmed in order to remove all doubt as to enforceability of the remedial agreements of the kind here involved.

Respectfully submitted,

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et al.